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C O N F I D E N T I A L MANILA 005014

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E.O. 12958: DECL: 12/15/2016

TAGS: PREL MARR CASC RP

SUBJECT: MARINE CASE: PHILIPPINE GOVERNMENT FILES PETITION

Classified By: Ambassador Kristie A. Kenney, reasons 1.4 (b) and (d)

¶1. (C) On December 15, the Philippine Solicitor General, on behalf of the Department of Foreign Affairs as a "real party-in-interest," filed a petition-in-intervention with the Court of Appeals in support of the motion already filed by Lance Corporal Daniel Smith's defense attorneys to return custody to the U.S. Government in accordance with the terms of the Visiting Forces Agreement. Embassy's Justice Attaché reviewed the petition and considered it strong. Embassy has sent a copy by e-mail to EAP/MTS.

¶2. (C) Pol/C met on December 14 with Undersecretary for Public Safety of the Department of Interior and Local Government Marius Corpus regarding the continued 24/7 access by Embassy officials and III MEF representatives as long as LCpl Smith remains in the Makati City Jail. Corpus indicated that a letter from the Ambassador to DILG Secretary Puno formalizing our request, and citing the need to uphold our obligations under the VFA, would be helpful in deflecting growing criticisms of special treatment. He promised that Secretary Puno would respond favorably in writing. Embassy

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sent this letter on December 15.

¶3. (U) It now appears that the Court of Appeals may permit the private prosecutor in the case also to file a motion, which could lengthen its period of consideration. There is little chance that the Court will rule before December 18, and possible that the deliberations could take even longer. As of COB December 15, the Assistant Solicitor General was reportedly conferring with the appeals judge.

¶4. (C) We continue to impress upon Philippine contacts the need for prompt action and the potential adverse consequences, in terms of cancellation of key U.S.-Philippine military programs, of further delay.

¶5. (U) Jail officials are now preparing a more suitable but equally private room (the former female warden's suite) at the prison. Prison officials continue to be highly cooperative with emboffs, in accordance with explicit instructions from Secretary Puno and U/S Corpus.

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